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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,230	02/14/2002	Jack L. Auflick	201-0924 (15842)	1020

27378 7590 11/16/2005

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EXAMINER	
FLANDERS, ANDREW C	

ART UNIT	PAPER NUMBER
2644	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/076,230	Applicant(s) AUFLICK ET AL.	
	Examiner Andrew C. Flanders	Art Unit 2644	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 21 October 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: _____.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See atached remarks.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☐ Other: _____.

VIVIAN CHIN
SUPERVISORY PATENT EXAMINER
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DETAILED ACTION

Response to Arguments

Applicant's arguments filed 21 October 2005 have been fully considered but they are not persuasive.

Applicant alleges:

> "The factors being argued by the final rejection are irrelevant and are not in accord with what is actually claimed. Claim 1 recites a directory based file system and a dual numbering scheme for tracks including 1) a flat-file selection number which assigns numbers without regard to the directory in which the tracks are stored, and 2) an in-directory selection number for display with a directory number for the directory in which the track is stored. Thus, the numbers assigned in the present invention are not representative of a desired order of playback as the final rejection seems to suggest."

Examiner respectfully disagrees with this allegation. Applicant alleges that the numbers assigned in the present invention are not representative of a desired order of playback as the final rejection seems to suggest. While the claim may not be directed toward a desired order of playback, the paragraph cited by Applicant that was presented in the Final Action was intend to dispute the allegation set forth previously by Applicant. Applicant alleged that taking the steps in Real would serve no useful purpose in the PC environment. However, Examiner maintains the position that the organization of the songs in the desired order, or folder order would require some sort of numbering or assigning of a label of which the Seo reference provides.

Applicant further alleges:

> "Claims 1 and 9 recite that the user searches for a track in either the flat file mode or the directory mode. Scanning of a media (e.g., compact disc) converts a directory based file system into a simple interface allowing the user to select tracks in either of these two modes wherein tracks can be navigated to sequentially. Real lacks this combination of these two particular selection modes."

Examiner respectfully disagrees with this allegation. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

While the Real reference when taken alone does not teach the limitations alleged by Applicant, the combination of the Real reference and the Seo reference does in fact teach a user searching for a track in either flat file mode or the directory mode as shown in the previous rejection. See page 4 of the Final rejection in which it states "when the user of the Real Audio software is using the master library, they can scroll through the files which are numbered by Seo's database numbering scheme, the numbers being displayed similar to Fig. 8 in Seo on Fig. 3-1 of Real" and "when the user of the Real Audio software is using the artist, genre or album directory, they can scroll through the files which are numbered by Seo's database numbering scheme; the numbers being displayed similar to Fig. 8 in Seo on Fig. 3-1 of Real". As such, Real does not lack the combination of these two particular selection modes as alleged by Applicant.

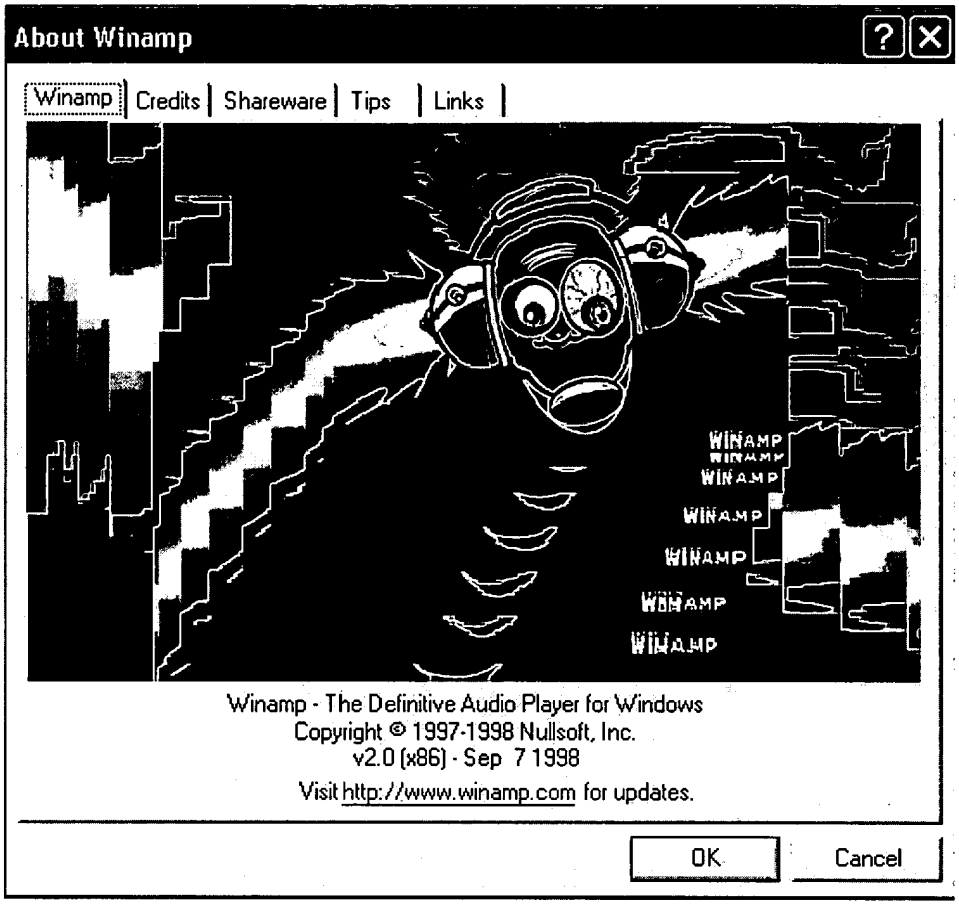
Applicant Further alleges:

> "Regarding Seo, any file numbering associated with the searching database is used internally by the apparatus and is not displayed or otherwise available to the user. There is no suggestion of using numbers as the basis for selection by the user. Instead, the user searches by keyword. Therefore, the combination of Seo with Real would not result in a device that displays track directory numbers. Furthermore, the database of Seo does not assign flat-file numbers which strip away directory information. The references lack any teaching or suggestion of simultaneously representing the tracks using a flat-file number and an in-directory number. Therefore, the teachings of the references fall well short of the claimed elements."

Examiner respectfully disagrees with this allegation. While Seo does not explicitly disclose displaying the numbers for the user, the combination does. That is the nature of the combination, applying the numbering system of Seo to the menu system of Real. Numbering files in a playlist implementation is notoriously well known in the art. For further reference of the combination see the screen shot of a comparable multimedia playlist software program, Winamp, from 1998 shown below. The playlist includes 6 songs, as the songs are shuffled about, they are renumbered. If one were to apply the Seo teaching to Real, it would be obvious and desirable to show the numbers of Seo in a manner shown below. Numbering the main directory and the sub directory of Fig. 3-1 in Real as disclosed by Seo and shown in the previous rejection would in fact result in a device that simultaneously represent tracks using a flat file number and an in-directory number. Again, pointing to Fig. 8 of Seo, applying these numbers to the Real art would have created this feature. Displaying these numbers would be a minor variation that was notoriously well known, as is evidenced by the screen shots below.


WINAMP
12. 03 - LET HER CRY.MP3
kbps
kHz
mono stereo
PCM
PRL
SHUFFLE
WINAMP PLAYLIST
1. 01 - THE BEGINNING.MP3
2. 01 - DAYS OF WONDER.MP3
3. 01 - PIANO MAN.MP3
4. 01 - LOST HORIZONS(1).MP3
5. 01 - WHITE FLAG.MP3
6. 01 - FASTER.MP3
+FILE
-FILE
SEL ALL
FILE INF
LOAD LIST


WINAMP
12. 03 - LET HER CRY.MP3
kbps
kHz
mono stereo
PCM
PRL
SHUFFLE
WINAMP PLAYLIST
1. 01 - THE BEGINNING.MP3
2. 01 - LOST HORIZONS(1).MP3
3. 01 - WHITE FLAG.MP3
4. 01 - DAYS OF WONDER.MP3
5. 01 - FASTER.MP3
6. 01 - PIANO MAN.MP3
+FILE
-FILE
SEL ALL
FILE INF
LOAD LIST



Applicant further alleges:

> "This argument ignores what is required for showing motivation to combine references. Assuming that a rejection cites references that do in fact contain the elements of an invention, the finding of an advantage to the combination merely confirms that the invention has a benefit. It does not, however, demonstrate that such a potential advantage would have been apparent to one skilled in the art without knowledge of the present specification."

Examiner respectfully disagrees with this allegation. While true that finding an advantage to the combination affirms that an invention has a benefit, if that advantage is well known previously, then one skilled in the art would not require the knowledge of

Applicant's specification. The combination uses the Real interface overlaid on the Seo database in order to assist a user in finding a file. In the combination the numbers are listed within the interface on Fig. 3-1 of Real (similar to the winamp structure shown above). The prior art clearly states adding an index information to be used in searching the digital audio data file, thereby improving the speed of searching the digital audio data file; paragraph 13. While searching is not the exact method claimed by Applicant, it provides sufficient motivation for one of ordinary skill in the art to add the indexing to the Real reference. In addition, the combination would thus create numbered files and displaying them would have been a well known implementation, as is further evidenced by the winamp structure; thus reading upon the claim limitations.

Applicant further alleges:

> "As recently reaffirmed by the CAFC in Princeton Biochemicals. Inc. v. Beckman Coulter. Inc., 04-1493 (2005), section 103 requires some suggestion or motivation, before the invention itself, to make the new combination. The present invention utilizes a dual mode numbering scheme for searching for tracks such that the numbers can be displayed using a display with only a few characters. The final rejection attempts to combine 1) a Pc-based display of Real having a nearly unlimited number of characters with 2) an internal database file representation of Seo that is not seen by the user. Nothing in the prior art itself motivates such a combination. The rejection attempts to use the invention as a roadmap to find its prior art components."

Examiner respectfully disagrees with this allegation. Again, the combination uses the Real interface overlaid on the Seo database in order to assist a user in finding a file. In the combination the numbers are listed within the interface on Fig. 3-1 of Real (similar to the winamp structure shown above). The prior art clearly states adding an

index information to be used in searching the digital audio data file, thereby improving the speed of searching the digital audio data file; paragraph 13. Thus, there is motivation for making the combination explicitly stated in the prior art. Furthermore, since the motivation is in the prior art, the rejection does not use the claimed invention as a road map as Applicant alleges.